

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
GREENVILLE**

JANET A. SHELTON,

Plaintiff,

v.

**LINCOLN FINANCIAL GROUP, THE
LINCOLN NATIONAL LIFE INSURANCE
COMPANY, and JEFFERSON PILOT
FINANCIAL INSURANCE COMPANY,**

Defendants.

Civ. Action No. 2:08-cv-278

MOTION FOR RELIEF FROM ORDER

The Defendants, Lincoln Financial Group, The Lincoln National Life Insurance Company and Jefferson Pilot Financial Insurance Company, pursuant to Rule 60 of the Federal Rules of Civil Procedure, respectfully request the Court to alter or amend its Order entered on September 8, 2009 [doc. no. 14] dismissing the case without prejudice by dismissing the case with prejudice or, in the alternative, setting aside its Order and permitting the parties to file their Stipulation of Dismissal with Prejudice. As grounds for their Motion, the Defendants state as follows:

1. On or about April 20, 2009, the Plaintiff and the Defendants reached a tentative settlement of all claims in the litigation. As a result, the parties filed a Notice of Settlement informing the Court of the settlement and indicating that they would file a stipulation of dismissal by no later than April 30, 2009.

2. Counsel for the Defendants forwarded a stipulation of dismissal to counsel for the Plaintiff for approval on April 20, 2009 and indicated that if approved, he would file the stipulation with the Court.

3. On April 24, 2009, counsel for the Plaintiff telephoned counsel for the Defendant and left a message with his assistant approving the stipulation and providing permission for counsel to file the stipulation with the Court.

4. Counsel for the Defendant does not recall seeing the phone message and due to a very busy schedule simply failed to take any further action with respect to filing the stipulation.

5. On September 8, 2009, the Court entered an Order [doc. no. 14] dismissing the case without prejudice as a result of the parties' failure to file the Stipulation of Dismissal by April 30, 2009 as indicated in the Notice of Settlement.

6. Amending the Order to provide that the case is dismissed with prejudice or permitting the parties to file the Stipulation of Dismissal with Prejudice will give effect to the parties' settlement agreement and will not cause any prejudice. A copy of the Stipulation of Dismissal with Prejudice previously agreed to by the parties is attached hereto as Exhibit A.

7. Counsel for the Defendant forwarded a copy of this Motion to counsel for the Plaintiff on September 11, 2009, and asked if Plaintiff would agree to the Motion. Counsel for the Plaintiff has not responded as of the date of filing of the Motion.

WHEREFORE, the Defendants, Lincoln Financial Group, The Lincoln National Life Insurance Company and Jefferson Pilot Financial Insurance Company, respectfully request the Court to alter or amend its Order entered on September 8, 2009 [doc. no. 14] dismissing the case without prejudice by dismissing the case with prejudice or, in the alternative, setting aside its Order and permitting the parties to file their Stipulation of Dismissal with Prejudice.

Dated: September 16, 2009.

Respectfully submitted,

/s/ John M. Scannapieco

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*Attorneys for the Defendants, Lincoln Financial
Group, The Lincoln National Life Insurance Company
and Jefferson Pilot Financial Insurance Company*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically by operation of the Court's electronic filing system or by U.S. first class mail, postage pre-paid to Denise Terry Stapleton, Terry Terry & Stapleton, 918 West First North Street, PO Box 724, Morristown, TN 37814 on this 16th day of September, 2009.

/s/ John M. Scannapieco

John M. Scannapieco